



ASSISTANT SECRETARY

THE DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

Administrative Circular No. 159
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To Heads of Bureaus,

Treasury Department

SUBJECT: Recommendation of Administrative Conference: "Principles and Guidelines for Implementation of the Freedom of Information Act

This circular transmits for your consideration Recommendation 24 of the Administrative Conference of the United States entitled "Principles and Guidelines for Implementation of the Freedom of Information Act," which was adopted at the Fifth Plenary Session of that Conference on May 7-8, 1971. The Administrative Conference is a Government agency established under 5 U.S.C. 571-576, composed of representatives of Government agencies, private practitioners, and experts in the field of administrative law, to study the efficiency and adequacy of administrative procedure used by administrative agencies, and to make recommendations to the agencies collectively and individually and to the President and the Congress. This recommendation on carrying out the Freedom of Information Act was adopted by the Conference after study by an appropriate committee and its administrative law consultant, and after considerable debate at the Plenary Session. The recommendation sets forth five general principles that agencies should conform to in handling requests for information and presents certain model procedures for agency consideration.

Chairman Roger Cramton of the Administrative Conference transmitted this recommendation with others to Secretary Connally May 17, 1971, with a request to be informed from time to time of steps taken to implement the recommendations in whole or in part. Pursuant to this request, General Counsel Pierce transmitted copies of the recommendation to the Assistant General Counsels, Chief Counsels, Tax Legislative Counsel, International Tax Counsel, and Director of Practice, with a memorandum of May 24, 1971, asking to be advised of any changes in procedures considered necessary on the basis of this recommendation. The general response from the Legal Staff was that our present regulations under the Freedom of Information Act were considered to conform to the principles stated and, to a considerable extent, to the specific guidelines, and no substantial revisions were recommended. In many instances, members of the Legal Staff consulted with you or your representatives in considering compliance with this recommendation. The findings were communicated to the Administrative Conference by the General Counsel in a letter of July 16, 1971.

I am circulating this recommendation to you at the suggestion of the General Counsel, since the principles and guidelines set forth administrative considerations which should come to your attention. If you determine that there are any areas of operation for which new procedures or revised regulations are appropriate, please consult with the members of the Legal Staff providing advice to your office. Both the General Counsel's Office and this office wish to be advised of any recommendations or procedural changes stemming from this recommendation so that they may be reported to the Administrative Council.

J. Elton Greenlee
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Acting Assistant Secretary for Administration

Attachment

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

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WASHINGTON, D.C. 20506

RECOMMENDATION 24: Principles and Guidelines for
Implementation of the Freedom of Information Act

The Freedom of Information Act, 5 U.S.C. § 552, expresses important policies with respect to the availability to the public of records of Federal agencies. To achieve free access to and prompt production of identifiable government records in accordance with the terms and policies of the Act, each agency* should conform to the statutory policy encouraging disclosure, adopt procedural regulations for the expeditious handling of information requests, and review the fees charged for providing information.

RECOMMENDATION

A. General Principles

Agencies should conform to the following principles in handling requests for information:

1. Each agency should resolve questions under the Freedom of Information Act with a view to providing the utmost information. The exemptions authorizing non-disclosure should be interpreted restrictively.
2. Each agency should make certain that its rules provide the fullest assistance to inquirers, including information relating to where requests may be filed. It should provide the most timely possible action on requests for information.
3. When requested information is partially exempt from disclosure the agency should, to the fullest extent possible, supply that portion of the information which is not exempt.

*The term agency as used herein denotes an agency, executive department, or a separate administration or bureau within a department which has adopted its own administrative structure for handling requests for records.

4. If it is necessary for an agency to deny a request, the denial should be promptly made and the agency should specify the reason for the denial. Procedures for review of denials within the agency should be specified and any such review should be promptly made.

5. Fees for the provision of information should be held to the minimum consistent with the reimbursement of the cost of providing the information. Provision should be made for waiver of fees when this is in the public interest.

B. Guidelines for Handling of Information Request

Each agency should adopt procedural rules to effectuate the principles stated in Part A. To assist in this task the following guidelines are set forth as a model of the kinds of procedures that are appropriate and would accomplish this purpose.

1. Agency assistance in making request for records.

Each agency should publish a directory designating names or titles and addresses of the particular officer and employees in its Washington office and in its various regional and field offices to whom requests for information and records should be sent. Appropriate means should be used to make the directory available to members of the public who would be interested in requesting information or records.

Each agency should direct one or more members of its staff to take primary responsibility for assisting the public in framing requests for identifiable records containing the information that they seek. The names or titles and addresses of these staff members should be included in the public directory referred to above.

2. Form of request.

a. No standard form.

No agency should require the use of standard forms for making requests. Any written request that identifies a record

sufficiently for the purpose of finding it should be acceptable. A standard form may be offered as an optional aid.

b. Categorical requests.

i. Requests calling for all records falling within a reasonably specific category should be regarded as conforming to the statutory requirement of "identifiable records" if the agency would be reasonably able to determine which particular records come within the request and to search for and collect them without unduly burdening or interfering with agency operations because of the staff time consumed or the resulting disruption of files.

ii. If any agency responds to a categorical request by stating that compliance would unduly burden or interfere with its operations, it should do so in writing, specifying the reasons why and the extent to which compliance would burden or interfere with agency operations. In the case of such a response the agency should extend to the requester an opportunity to confer with it in an attempt to reduce the request to manageable proportions by reformulation and by outlining an orderly procedure for the production of documents.

3. Partial disclosure of exempt records and files.

Where a requested file or record contains exempt information that the agency wishes to maintain confidential, it should offer to make available the file or a copy of the record with appropriate deletions if this can be done without revealing the exempt information.

4. Time for reply to request.

Every agency should either comply with or deny a request for records within ten working days of its receipt unless additional time is required for one of the following reasons:

a. The requested records are stored in whole or part at other locations than the office having charge of the records requested.

b. The request requires the collection of a substantial number of specified records.

c. The request is couched in categorical terms and requires an extensive search for the records responsive to it.

d. The requested records have not been located in the course of a routine search and additional efforts are being made to locate them.

e. The requested records require examination and evaluation by personnel having the necessary competence and discretion to determine if they are: a) exempt from disclosure under the Freedom of Information Act and b) should be withheld as a matter of sound policy, or revealed only with appropriate deletions.

When additional time is required for one of the above reasons, the agency should acknowledge the request in writing within the ten-day period and should include a brief notation of the reason for the delay and an indication of the date on which the records would be made available or a denial would be forthcoming.

The ten-day time period specified above should begin to run on the day that the request is received at that office of the agency having charge of the records. When a request is received at an office not having charge of the records, it should promptly forward the request to the proper office and notify the requester of the action taken.

If an agency does not reply to or acknowledge a request within the ten-day period, the requester may petition the officer handling appeals from denials of records for appropriate action on the request. If an agency does not act on a request within the extended deadline adopted for one of the reasons set forth above, the requester may petition the officer handling appeals from denials of records for action on the request without additional delay. If an agency adopts an unreasonably long extended deadline for one of the reasons set forth above, the requester may petition the officer handling appeals from denials of records for action on the request within a reasonable period of time from acknowledgment.

An extended deadline adopted for one of the reasons set forth above would be considered reasonable in all cases if it does not exceed ten additional working days. An agency may adopt an extended deadline in excess of the ten additional working days (i.e. a deadline in excess of twenty working days from the time of initial receipt of the request) where special circumstances would reasonably warrant the more extended deadline and they are stated in the written notice of the extension.

5. Initial denials of requests.

a. Form of denial.

A reply denying a written request for a record should be in writing and should include:

i. A reference to the specific exemption under the Freedom of Information Act authorizing the withholding of the record and a brief explanation of how the exemption applies to the record withheld.

ii. An outline of the appeal procedure within the agency and of the ultimate availability of judicial review in either the district in which the requester resides or has a principal place of business, or in which the agency records are situated.

If the requester indicates to the agency that he wishes to have a brief written statement of the reasons why the exempt record is being withheld as a matter of discretion where neither a statute nor an executive order requires denial, he will be given such a statement.

b. Collection of denials.

A copy of all denial letters and all written statements explaining why exempt records have been withheld should be collected in a single central-office file.

c. Denials; protection of privacy.

Where the identity of a requester, or other identifying details related to a request, would constitute an unwarranted

invasion of personal privacy if made generally available, as in the case of a request to examine one's own medical files, the agency should delete identifying details from copies of the request and written responses to it that are made available to requesting members of the public.

6. Intra-agency appeals.

a. Designation of officer for appeals.

Each agency should publicly designate an officer to whom a requester can take an appeal from a denial of records.

b. Time for action on appeals.

There should be only one level of intra-agency appeal. Final action should be taken within twenty working days from the time of filing the appeal. Where novel and very complicated questions have been raised, the agency may extend the time for final action for a reasonable period beyond twenty working days upon notifying the requester of the reasons for the extended deadline and the date on which a final response will be forthcoming.

c. Action on appeals.

The grant or denial of an appeal should be in writing and set forth the exemption relied on, how it applies to the record withheld, and the reasons for asserting it. Copies of both grants and denials on appeal should be collected in one file open to the public and should be indexed according to the exemptions asserted and, to the extent feasible, according to the type of records requested.

d. Necessity for prompt action on petitions complaining of delay.

Where a petition to an appeals officer complaining of an agency's failure to respond to a request or to meet an extended deadline for responding to a request does not elicit an appropriate response within ten days, the requester may treat his request as denied and file an appeal. Where a petition to an

appeals officer complaining of the agency's imposition of an unreasonably long deadline to consider assertion of an exemption does not bring about a properly revised deadline, the requester may treat his request as denied after a reasonable period of time has elapsed from his initial request and he may then file an appeal.

C. Fees for the Provision of Information

Each agency should establish a fair and equitable fee schedule relating to the provision of information. To assist the agencies in this endeavor, a committee composed of representatives from the Office of Management and Budget, the Department of Justice and the General Services Administration, should establish uniform criteria for determining a fair and equitable fee schedule relating to requests for records that would take into account, pursuant to 31 U.S.C. § 483a (1964), the costs incurred by the agency, the value received by the requester and the public interest in making the information freely and generally available. The Committee should also review agency fees to determine if they comply with the enunciated criteria. These criteria might include the following:

1. Fees for copying documents. In view of the public interest in making government information freely available, the fee charged for reproducing documents in written, typewritten, printed or other form that permits copying by duplicating processes, should be uniform and not exceed the going commercial rate, even where such a charge would not cover all costs incurred by particular agencies.

2. No fee for routine search. In view of the public interest in making government held information freely available, no charge should be made for the search time and other incidental costs involved in the routine handling of a request for a specific document.

3. No fee for screening out exempt records. As a rule, no charge should be made for the time involved in examining and evaluating records for the purpose of determining whether they are exempt from disclosure under the Freedom of Information Act

and should be withheld as a matter of sound policy. Where a broad request requires qualified agency personnel to devote a substantial amount of time to screening out exempt records and considering whether they should be made available, the agency in its discretion may include in its fee a charge for the time so consumed. An important factor in exercising this discretion and determining the fee should be whether the intended use of the requested records will be of general public interest and benefit or whether it will be of primary value to the requester.